



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201321026**

Release Date: 5/24/2013

Date: February 26, 2013

UIL: 501.06-00

501.06-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer

Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: October 24, 2012

UIL: 501.06-00
501.06-01

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Company =
Date 1 =
\$Y =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code § 501(c)(6). The basis for our conclusion is set forth below.

Facts

You were formed by two affiliated nonprofit organizations whose membership is composed of banks, credit card issuers and other financial services companies. Your Articles of Incorporation state that you were formed:

- to help consumers who are victims of identity theft by establishing and operating a victim assistance center;
- to help the financial services industry detect and prevent identity theft and related fraud;
- to promote the detection, apprehension and prosecution of identity theft; and
- to conduct such other activities as are permitted for a non-stock corporation.

Your bylaws provide that you are a membership organization. The requirements for membership are:

- (a) the prospective member is recommended for approval by the membership committee or be a member of either the two affiliated nonprofit organizations,
- (b) one of the top 50 banks, credit card issuers or other non-bank financial services companies,

- (c) maintains an ongoing customer relationship with individual consumers,
- (d) agrees and is capable of complying with the Operating Rules,
- (e) pays applicable costs of membership, and
- (f) signs the Member Service Agreement.

In your Form 1024, you indicate that your primary activity is the operation of a call center for consumers of member financial institutions who are victims of suspected identity theft. You state that when a consumer suspects and discovers identity theft, the consumer contacts the member financial institution serving their account. The participating member gathers information about the suspected identity theft event. In the event of identity theft, the member explains to the consumer the services of the call center and offers the consumer use of the call center's services free of charge.

The call center obtains the consumer's credit reports and combines this with any additional information about the suspected identity theft. If the call center identifies fraudulent new accounts, the call center transmits a fraud alert to the national credit bureaus and transmits a report to each affected company. The call center also transmits a report to a national identity theft database. The call center plans to analyze and share data collected with law enforcement agencies and other governmental agencies for the prosecution of criminal offenses. The call center plans to operate from 8 a.m. – 11 p.m. Monday through Friday, except for holidays.

In your Date 1 letter, you state that you spend time and resources on the following activities:

1. Communications and education, including managing and developing content for your website, blog and social media – %. You also employ news releases to educate consumers about identity fraud. You state that you use media interviews to deliver information about identity fraud.
2. Public policy including Congressional testimony, meeting and communicating with Congressional staff and federal agencies; analysis and providing comments on federal agencies activities, participation in public sector forums and outreach to regulators – %. You also state that you review and comment on proposed regulations.
3. Victim assistance operations including development of best practices, supervision of your vendor, assessment of vendor's physical and network security, quality control and member training in connection with the use of the victim assistance service – %. You state that the benefits of the victim assistance service:
 - Helps members manage their business, reputational and compliance risks associated with identity fraud;
 - Lessens the possibility of complaints and possibly litigation by customers who experienced identity theft;

- May deter adoption of additional costly and burdensome legislation relating to identity fraud.
 - Helps members comply with the "red flag" regulations issued by federal financial regulatory agencies to protect consumers who are victims of identity fraud.
4. Corporate activities including meetings of board committees and the board of directors, recruiting and briefing directors, preparation and management of your budget and coordination with your financial officer and auditors on tax returns and annual audit – %.
 5. Membership and member relations including recruiting new members, retention of existing members and member communications – %. You state that seeking additional members to join ensures your ongoing vitality and financial soundness. You also state, "Newsletters, meetings and presentations with individual companies and other communications help members understand and derive maximum benefit from [your] work."
 6. Research and industry meetings including private sector forums and co-sponsoring a research survey – %. You state that you co-sponsor the survey to help members and the industry improve their understanding of the causes of identity fraud and its solutions.
 7. Law enforcement meetings – %. You share information about identity fraud activity that you gather from your members with law enforcement agencies. You also share consumers' information about identity fraud, with the consumers' consent, with a federal agency that maintains a national database for use by law enforcement agencies.
 8. Licensing agreements and the development of trademarks – %. You state that your licensing activities protect the trademarks of your identity fraud products.

You have contracted with Company to be the exclusive provider of your name branded identity protection and identity security services and perform identity fraud related services. In particular, Company will operate the call center on your behalf. Pursuant to the second amended and restated Master Services Agreement (MSA), Company will accept cases, schedule and conduct interviews, generate case reports and non-member letters, and provide such case reports to you, participating members, law enforcement, and other governmental agencies.

Pursuant to the MSA, Company will own the software used to conduct the services and is responsible for providing all facilities, personnel, hardware, software and other resources as necessary to provide your branded services. Company plans to establish a help desk to assist its employees with problems or questions related to membership services, the use of software, computers, telephones and other technology used in the performance of the membership services. Each member is required to authenticate the identity of the consumer affected by identity fraud before referring the customers to the call center. Members will manage their cases by using Company's software program. Company will provide training to the member's

employees. The MSA also states that the Company, for an additional fee, plans to provide credit-monitoring services to any consumer referred by a member.

In return, through a Branded Services License Agreement (BSLA), you will grant to Company a non-exclusive, non-transferable, royalty-free and fully paid-up limited license to market the member services to members. Company will provide you with marketing materials and you shall have primary responsibility for the approval of such materials and provide the public relations, communications, legislative and regulatory relations, as well as the promotion of your brand. Company plans to offer your branded services to your members, non-member businesses, and consumers through Company's or your website. However, you are restricted from endorsing, promoting, sponsoring or providing any competitive services, or entering into an agreement with a third party for the provision of any competitive services. Also, you have the primary responsibility for enhancing and protecting the value and use of your brand endorsement. Company will offer your branded services through an agreed on-line banner advertisement or on other web page posting that hyperlink to one or more web pages hosted by Company.

Under the License Fees Agreement (LFA), Company will pay you license fees in connection with your branded services. Company will pay license fees for use of your intellectual property and as reimbursement for the activities, efforts or endeavors that you undertake in connection with the branded services. Company will make payments to you based on either a percentage of gross revenues or a set minimum fee (\$Y) per month. Company will be responsible for all billing and collection in connection with your branded services. Company will provide you with data collected in the course of delivering your branded services.

In addition to the above, Company is also responsible for monthly billing and collection of all fees payable by members under their member agreements for member services. Members will make payments directly to Company. You plan to assist Company and members if there are billing disputes or collection issues. Your member agreement provides for suspension or termination of member services to any member for failure to pay any fees when due.

The BLSA requires you to introduce Company to executives of your member businesses and to facilitate communication between Company and your members, other trade associations, and other interested parties. The BLSA also allows Company to attend your board of directors meetings, your annual membership meeting, and certain meetings at your members' offices pertaining to the branded services. The MSA prohibits you from removing or modifying in any material without Company's prior written approval. In addition, you must include the relevant provisions of the MSA in agreements between you and your members and provide Company a copy of any such member agreements. You are required to notify Company or the related §501(c)(6) organization on a monthly basis (or other agreed frequency) any changes in your membership or your bylaws for membership eligibility.

In addition to the above, you plan to offer through Company, several value-added services to members for an additional monthly fee. Company may provide these services to consumers and to other non-members on a case-by-case basis. Members may re-package these same services and offer them to their client base for free or for a fee.

In your letter of Date 1, you provided a copy of your operating rules. Your operating rules govern the operation of the call center and the use of services by your participating members. Failure to comply with the rules may result in suspension of services or termination of member agreement.

According to the operating rules, members must verify and authenticate the identification of a consumer before referring that person to the call center. The member must also investigate any allegation by a consumer that identity fraud has occurred. Members are required to use the scripts that you provide to communicate with consumers regarding services. Members may use your name, trademark and service marks in co-branding the services provided under the member agreement. In addition, each of your members must appoint an individual who will act as an official contact for all operational matters relating to that member's participation in the call center, such as:

- Facilitating contact with you and Company for resolution of set up, customer service issues, billing questions and other matters;
- Designating member personnel who will have access to Company's software program and managing the member's use of the software system.
- Managing the distribution, use, and security of passwords;
- Coordinating the training of member personnel who will refer consumers to the call center; and
- Providing information and operational support to you and Company.

You have an agreement with one of your §501(c)(6) organizers that helps you control costs. The agreement allows you to use the organizer's office space, equipment, personnel, and services on a cost-sharing basis. The agreement states that you will pay a percentage of your annual budget for all costs. The organizer bills you monthly. Your contract with the organizer automatically renews every five years unless either party provides the other with written cancellation notice.

You state that you will not distribute to participating members revenue earned through fees and licensing agreements but use the revenue to improve services or reduce costs that the members pay for services. You also state that participating members should consider and comply with the regulatory issues that affect their respective industry as it relates to the call center.

In your Statement of Revenue and Expenses for years 20 and ending October 20 , you present decreasing revenues from dues and assessments of %, %, %, and %, respectively of Total Revenue. You also present increasing revenues from licensing activities of %, %, %, and %, respectively of Total Revenue.

Law

I.R.C. § 501(c)(6) provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization, whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 56-65, 1956-1 C.B. 199 holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization is not entitled to exemption under § 501(c)(6) of the Code as a business league, even though it performs functions that are of benefit to the particular industry and the public generally.

Rev. Rul. 58-294, 1958-1 C.B. 244, held, since the association is engaged in activities which are ordinarily carried on for profit and since it is engaged in furthering the business interests of the dealers in the particular patented product, rather than the improvement of business conditions of one or more lines of business, it does not qualify for exemption from Federal income tax as a business league under § 501(c)(6) of the Internal Revenue Code of 1954.

Rev. Rul. 66-338, 1966-2 C.B. 226 holds that an organization formed to promote the interest of a particular retail trade which advised its members in the operation of their individual businesses and sells supplies and equipment to them is not exempt under § 501(c)(6) of the Code. The revenue ruling states that by providing its members with an economy and convenience in the conduct in their individual businesses, the organization is performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions in their trade or business.

Rev. Rul. 67-77, 1967-1 C.B. 138 describes an organization composed of dealers in a certain make of automobile in a designated area that is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. The revenue ruling holds that the advertising is a service for its members and the organization is not entitled to exemption as a business league under § 501(c)(6) of the Code. Activities should be directed towards the improvement of business conditions of one or more lines of business as distinguished from the performance of

services for individual persons.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of § 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 73-411, 1973-2 C.B. 180, a shopping center merchants' association whose membership is restricted to and required of the tenants of a one-owner shopping center and their common lessor, and whose activities are directed to promoting the general business interests of its members, does not qualify as a business league or chamber of commerce under § 501(c)(6) of the Code.

Rev. Rul. 83-164, 1983-2 C.B. 95, the ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under § 501(c)(6) of the Code. The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of § 501(c)(6) of the Code because a single brand represented only a segment of an industry.

In Bluetooth Sig Inc., v. U.S., 611 F.3d 617 (2010) the court held that activities of association owning and marketing a wireless networking protocol and trademark provided non-incidental services for particular members, and therefore was not entitled to exemption from federal income tax as a business league; overwhelming purpose of association's promotional activities was to promote its brand, and its trademark was the focus of its advertising campaign.

In MIB, INC., v. C.I.R., 734 F.2d 71 (1984), the Court held that a nonstock, nonprofit corporation providing a data bank exchange for certain information concerning health and insurability of people who applied for life insurance was not exempt from income tax as a business league. The Court reasoned that in determining whether the association is exempt from income tax as a business league, the ultimate inquiry is whether the association's activities advance members' interests generally, by virtue of their membership in industry, or whether they assist members in pursuit of their individual business.

In Louisiana Credit Union League, v U.S., 693 F.2d 525 (1982), the Court affirmed the district court ruling which held that the League's data processing and debt collection services were not substantially related to its exempt function. The benefits flowing from these services were restricted to the participating credit unions and for the primary purpose of earning money for the league. Because the benefits of LCUL's debt collection activities accrue only to certain credit unions, these activities constitute the performance of services of a commercial nature for individual members rather than the promotion of a common business interest with inherently group benefits. Tax exemption is based on the notion that a business league promotes a common business interest of all its members and does not perform particular services for

individual persons.

In U.S. v. Oklahoma City Retailers Assn., 331 F.2d 328 (1964), the Court held that under the statute and the regulation, in order for the taxpayer to qualify for exemption as a business league, its activities must be "directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons." Viewing the evidence, with this test in mind, it is without dispute that the Association chiefly performed "particular services for individual persons", namely, the supplying of credit information to some but not all of its members. It also furnished the same service to non-members and charged them the same fixed fee as required of members.

In Evanston-North Shore Board of Realtors v. U.S., 320 F.2d 375, 162 Ct.Cl. 682 (1963), cert. denied, 376 U.S. 931, 84 S.Ct. 700, 11 L.Ed.2d 650 (1964), the Court held that in order for an organization to qualify for an exemption, its activities must be "directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons," and it must not 'engage in a regular business of a kind ordinarily carried on for profit. The court further stated that where such an entity's service is operated primarily for individual members as a convenience and economy in the conduct of their respective businesses, rather than for the improvement of business conditions within the [industry] generally ... the operation is not an activity warranting an exemption under the statute.

In National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987), the Court held that an organization which served the needs of users of a specific brand of computers promoted only a segment of a line of business and was not exempt under § 501(c)(6) of the Code.

Rationale

The information that you have submitted establishes that your goal is to establish and improve the position in the marketplace of your branded identity theft services and to promote the offering of the branded services to consumers. In addition, you limit your branded identity theft services only to your members and your services are in competition with other similar commercial services.

Inherent in your membership provision is the restriction that your members support the use of your branded identity theft services. Your members must be one of the top 50 banks, credit card issuers or other non-bank financial services companies or a member of the affiliated nonprofit organizations. Therefore, your membership is not considered open generally to all companies in your related line of businesses, and you are not considered to be a business league or trade association within the meaning of § 501(c)(6) as described in Rev. Rul. 73-411, *supra*.

Your branded services are only available to Company and your participating members and not the industry at large. Such services would only benefit membership that met a certain criteria to the disadvantage of non-members. See Rev. Rul. 67-77, *supra*. This means that you do not represent a line or lines of businesses, as required under § 501(c)(6) of the Code and as discussed in National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979). Therefore, we

have concluded that you are not acting on behalf of a recognizable line of business within the scope of § 501(c)(6).

You require members to pay you a fee and in turn, allow these members use of the call center and related services. The rates charged for use of the call center's services are directly proportionate to the extent services are used by your members and their customers. The benefits received benefit the users rather than a line of business as required by Treas. Reg. §1.501(c)(6)-1.

In addition, the promotion of your branded services directly to your members serves to improve your members' positions in the marketplace as opposed to serving the industry at large. By providing these services for your branded product, you are providing a particular service to your members. Rev. Rul. 56-65, *supra*. The particular services deficiency is not cured by the fact that your members may or may not be in competition with each other, or that your membership is open to members of other related organizations, or that you shared information obtained from the use of your branded services with one or more of governmental agencies for the benefit of consumers. A key consideration is that your branded services give your members a competitive edge over the industry at large. See Rev. Rul. 83-164, *supra* and National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987).

You encourage your members to offer your branded services to consumers through a licensing agreement available from Company. Only Company and your participating members may offer the branded services of the call center. By providing members with an economy and convenience in the conduct of their individual businesses you are performing particular services for individual persons as distinguished from activities aimed at the improvement of business conditions. See Rev. Rul. 68-264, *supra* and Rev. Rul. 66-338, *supra*.

A §501(c)(6) organization is a membership organization characteristically supported by dues. While such an organization may receive a substantial portion or even the primary part of its income from non-member sources, membership support, both in the form of dues and involvement in the organization's activities, must be at a meaningful level. In subsequent information that you provided, we note that your revenues from dues and assessments steadily declined while revenues from your branded services and other activities steadily increased, giving a commercial hue to your activities as opposed to a business league. Similar to the organizations in Bluetooth Sig Inc., v. U.S., 611 F.3d 617 (2010) and Louisiana Credit Union League, v U.S., 693 F.2d 525 (1982), your activities do not promote a common business interest with inherently group benefits. Instead, your activities are commercial in nature in that the branded services you offer are available only to individual members and certain consumers from a variety of commercial establishments. See Rev. Rul. 58-294, *supra*.

In addition, you state that the affiliated companies on your behalf, plan to contact several agencies regarding the call center's information sharing objectives and processes. You anticipate that there will be a direct feed of information from Company to one or more of these governmental agencies' database. This information sharing process will not be available to non-members. Nor, did you indicate whether the results of this information sharing with the various governmental agencies would be available to non-members. See MIB, INC., v. C.I.R., 734 F.2d 71 (1984). By providing the information sharing arrangement only for your

participating members, you are providing a particular service to your participating members. Rev. Rul. 56-65, *supra*. Your information sharing programs also serve as an economy or a convenience to your members. See Rev. Rul. 66-338, *supra*, U.S. v. Oklahoma City Retailers Assn., 331 F.2d 328 (1964) and Evanston-North Shore Board of Realtors v. U.S., 320 F.2d 375, 162 Ct.Cl. 682 (1963).

Finally, you state that the operation of the call center will assist you in complying with federal regulations designed to protect consumers. This is further evidence that your activities effect economies in the operation of your members' individual businesses, and as such, you are performing particular services for individual persons. See Rev. Rul. 56-65, *supra*.

Based on the above, you do not qualify for exemption as an organization described in §501(c)(6) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements
Exempt Organizations